

Application Number 10/698,881
Response to Office Action mailed September 13, 2007

REMARKS

This Amendment is responsive to the Office Action dated September 13, 2007. Applicants have amended claims 28, 29 and 41 for clarity reasons unrelated to patentability. Applicants have canceled claims 1, 4-11, 23, 25, 27, 30-32 and 38-40, and added new claim 43. Claims 2-3, 12-17, 23 and 26 were previously canceled.

Claims 19-22, 28-29, 33-37 and 41-43 are now pending. Claims 19, 28, 33 and 41 are the pending independent claims.

Double Patenting Rejections

In the Office Action, the Examiner advanced provisional non-statutory obviousness-type double patenting rejections with respect to several of the claims. Applicants note the provisional status of such rejections.

Applicants also note that the current claim cancellations should render all of the provisional double patenting rejections moot.

Claim 41 was included in the double patenting rejections. However, Applicants believe that this was a mistake, as claim 41 includes features similar to claims 19, 28 and 33, which were not included in the double patenting rejections.

Claim Rejections Under 35 U.S.C. § 102

In the interest of expediting prosecution of the Application, Applicants have canceled all pending claims that were rejected under 35 U.S.C. 102. However, Applicants do not acquiesce to any of the rejections or the Examiner's interpretations of the prior art.

Claim Rejections Under 35 U.S.C. § 103 – Independent claims 19, 28, 33 and 41

The pending claims stand rejected as being unpatentable under 35 U.S.C. § 103 based on several different rationales. In particular, the Examiner advanced the following rejections of independent claims 19, 28, 33 and 41.

Independent method claims 19 and 33 were rejected under 35 U.S.C. § 103 as being unpatentable over Krakovsky '840 (US Patent 5,454,840) in view of Whitehurst '294 (US Patent

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6,901,294) or in view of Brenman '102 (US Patent 4,663,102) and further in view of Mann '171 (US 6,941,171).

Independent device claims 28 and 41 were rejected under 35 U.S.C. § 103 as being unpatentable over Krakovsky '840.

Independent claims 19 and 41 were rejected under 35 U.S.C. § 103 as being unpatentable over Whitehurst' 895 (US Patent 6,885,895) in view of Mann '171 or as being unpatentable over Whitehurst '895 in view of Whitehurst '294 and further in view of Mann '171 and still further in view of Krakovsky '840.

Independent claims 28 and 41 were also rejected under 35 U.S.C. § 103 as being unpatentable over Gerber '240 (US Patent Application 2004/0049240) in view of Krakovsky '840.

Independent claims 19 and 33 were also rejected under 35 U.S.C. § 103 as being unpatentable over Gerber '240 in view of Mann '171, or as being unpatentable over Gerber '240 in view of Krakovsky '840 and further in view of Mann '171.

Applicants respectfully submit that all of these rejections (as applied to independent claims 19, 28, 33 and 41) are improper for at least two reasons. In the following discussion, Applicants provide a brief summary of the currently pending claims, and detailed explanations of the two fundamental problems that pervade the Examiner's entire analysis of claims 19, 28, 33 and 41. Applicants believe that the two fundamental points discussed below address and overcome all pending rejections.

In general, Applicants have cancelled claims as indicated above to specifically focus the prosecution of the present application on claims that require the delivery of a training sequence of stimulation pulses to a prostate gland via an implantable medical device. Claims 19-22 and 33-37 recite methods and claims 28-29 and 41-43 recite implantable medical devices that perform such methods. All pending claims now require delivery of a training sequence to the prostate gland that defines a first pulse train and a second pulse train, wherein the first pulse train and the second pulse train are each delivered over time periods on an order of a week. Claim 33 further requires that the first pulse train is different than the second pulse train, and claims 19, 33 and 41 more specifically require that the second pulse train includes more pulses per unit time than the first pulse train.